

Short Title: Partition by Allotment.

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR PARTITION BY ALLOTMENT IN A  
PARTITION PROCEEDING.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 2 of Chapter 46 of the General Statutes reads as rewritten:

"Article 2.

~~"Partition Sales of Real Property.~~ Alternative Methods of Partition of Real Property.

"Part 1.

"General Provisions.

**"§ 46-22. ~~Sale in lieu of partition.~~ Alternative methods of partition.**

(a) Subject to G.S. 46-22.1(b), the court shall order ~~a sale of the property described in the~~  
~~petition, or of any part, one of the following alternative methods of partition~~ only if it finds, by a  
preponderance of the evidence, that an actual partition of the ~~lands~~ real property cannot be made  
without substantial injury to any of the interested parties, after having considered evidence in  
favor of actual partition and evidence in favor of ~~a sale~~ the alternative method of partition  
presented by any of the interested ~~parties.~~ parties:

(1) A partition sale of part or all of the property under Part 2 of this Article.

(2) A partition by allotment of part or all of the property under Part 3 of this  
Article.

(a1) The court has discretion in determining among the alternative methods of partition.

(b) In determining whether an actual partition would cause ~~"substantial injury"~~  
substantial injury to any of the interested parties, the court shall consider all of the following:

(1) Whether the fair market value of each cotenant's share in an actual partition of the property would be materially less than the ~~amount~~ value each cotenant would receive from the ~~sale of the whole~~ alternative method of partition.

(2) Whether an actual partition would result in material impairment of any cotenant's rights.

(b1) The court, in its discretion, shall consider whether the remedy of owelty ~~where such remedy~~ can aid in making an actual partition occur without substantial injury to ~~the~~ any of the interested parties.

(c) ~~The~~ If the court orders an alternative method of partition, the court shall make specific findings of fact and conclusions of law supporting an order of sale of the property. the order.

(d) The party seeking a ~~sale of the property shall have an~~ alternative method of partition has the burden of proving substantial injury under ~~the provisions of this section~~.

...

"Part 2.

"Partition Sale.

...

"Part 3.

"Partition by Allotment.

**"§ 46-34.1. Partition by allotment; appraisal.**

(a) In a partition by allotment under this Part, the court shall allot the entire property to one or more cotenants and order that the cotenant or cotenants purchase the other cotenants' interests according to the value of the property.

(b) If the court orders a partition by allotment and the parties do not agree on the value of the property, the court shall order an independent appraisal of the property prepared by a real

estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in  
accordance with the Uniform Standards of Professional Appraisal Practice.

(c) Before ordering a partition by allotment, the court may in its discretion require written  
evidence from the party or parties requesting the partition by allotment that the appraiser has  
been paid in full for the appraisal.

*[Staff Note: New § 46-34.1(b) and (c) borrow language from G.S. 46-28.1(d1). Staff has received  
a report that in partition proceedings, appraisers are often paid many months after the appraisal;  
this practice can dissuade appraisers from participating in future partition proceedings.]*

**"§ 46-34.2. Order for possession.**

(a) An order for possession of real property allotted pursuant to this Article, in favor of  
the party to which an allotment has been made and against any party in possession at the time of  
application therefor, may be issued by the clerk of the superior court if the party applying for the  
order for possession has given ten days' notice to the party who remains in possession of the real  
property at the time application is made. The party shall not give notice until the court has ordered  
the allotment.

(b) G.S. 46-19.1(b) applies to an order for possession issued pursuant to this section."

*[Staff Note: G.S. 46-34.2 mirrors language in the Orders for Poss. in Real Property Partitions  
First Draft, which was approved by the Commission.]*

**SECTION 2.** G.S. 46-44 reads as rewritten:

**"§ 46-44. ~~Sale of personal property on partition.~~ Alternative methods of partition of  
personal property.**

(a) If a division of personal property owned by any persons as tenants in common, or  
joint tenants, cannot be had without injury to some of the parties interested, and a sale thereof is  
deemed necessary, If the court determines that an actual partition of personal property would  
injure some of the interested parties and that an alternative method of partition is necessary, the  
court shall order a sale to be made as provided in Article 29A of Chapter 1 of the General  
Statutes, one of the following alternative methods of partition:

(1) A partition sale to be made as provided in Article 29A of Chapter 1 of the General Statutes. In a partition sale, the court is not required to appoint more than one commissioner.

(2) A partition by allotment to be made as provided in G.S. 46-34.1, except that if the court orders an independent appraisal, the appraisal shall be conducted by a qualified personal property appraiser.

(b) The court has discretion in determining among the alternative methods of partition."

*[Staff Note: The final sentence of G.S. 46-44(a)(1) was approved by the General Statutes Commission in the Partition Sale/Clarify Number of Comm'rs Second Draft.]*

**SECTION 3.** This act becomes effective [October 1, 2019], and applies to partition proceedings commenced on or after that date.

*[Staff Note: If the partition by allotment procedure is approved, Chapter 46 would need to be rewritten and reorganized to conform to this new procedure. This draft hints at but does not fully illustrate a possible reorganization and does not include the necessary conforming changes in Chapter 46 and the rest of the General Statutes. Staff is currently working on a draft that will completely rewrite and reorganize Chapter 46 as a new Chapter 46A. If the partition by allotment procedure is approved, that draft will include all the necessary changes.]*